

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

NEW SEASONS MARKET LLC

and

**UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 555**

**Cases 19-CA-296393
19-CA-297405
19-CA-300030
19-RC-296616**

ORDER FURTHER CONSOLIDATING CASES AND NOTICE OF HEARING

On January 5, 2023, I issued a Report and Recommendation on Objections in Case 19-RC-296616 and directed that a hearing be held on objections, filed by the United Food and Commercial Workers Local 555, to conduct affecting the results of the election. The Report and Recommendation on Objections is attached as Exhibit A.

On January 5, 2023, I also issued a Consolidated Complaint (the "Consolidated Complaint") in Cases 19-CA-296393, 19-CA-297405, and 19-CA-300030, which involves evidence much the same as that necessary to resolve the above-referenced objections. That Consolidated Complaint is attached as Exhibit B.

IT IS HEREBY ORDERED, pursuant to § 102.33 of the Board's Rules, that Cases 19-CA-296393, 19-CA-297405, 19-CA-300030, and 19-RC-296616 are further consolidated for the purposes of hearing, ruling, and decision by an administrative law judge as to the unfair labor practices alleged and the objections. Upon the conclusion of the hearing, the administrative law judge shall serve on the parties a decision and order as to the unfair labor practices alleged, as well as a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations as to the disposition of the

objections. Thereafter, that decision and order and report on objections shall be transferred to and continued before the Board in Washington, DC, and the provisions of §§ 102.46 and 102.69(c)(2) of the Board's Rules shall govern the filing of exceptions.

NOTICE OF HEARING

PLEASE TAKE NOTICE that, beginning at 9 a.m. on **the 18th day of April, 2023**, and on consecutive days thereafter until concluded, in the **Green-Wyatt Federal Building, 1220 S.W. Third Avenue, Suite 605, Portland, Oregon, or via Zoom videoconference**, a hearing will be conducted before an administrative law judge of the National Labor Relations Board on the allegations set forth in the Consolidated Complaint and on issues raised in the Report and Recommendation on Objections. At the hearing, parties to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Seattle, Washington, this 5th day of January, 2023.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 Second Ave., Ste. 2948
Seattle, WA 98174

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not

submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 19-CA-296393, et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

NEW SEASONS MARKET LLC

Employer

and

Case 19-RC-296616

**UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 555**

Petitioner

REPORT AND RECOMMENDATION ON OBJECTIONS

Based on a petition filed on May 27, 2022, and pursuant to a Decision and Direction of Election issued on July 22, 2022, a mail-ballot election was conducted from August 11, 2022, to September 1, 2022, to determine whether a unit of employees of New Seasons Market LLC (the “Employer”) wishes to be represented for the purposes of collective bargaining by United Food and Commercial Workers Local 555 (the “Union”). That voting unit consists of:

Included: All full-time and regular part-time employees, including Assistant Department Managers, Leads, and Culinary Events Specialists employed by the Employer at its store located at 1453 NE 61st Avenue, Hillsboro, Oregon.

Excluded: All Managers, Assistant Store Managers, Store Chefs, managerial employees, all other employees, and guards and supervisors as defined by the Act.

The tally of ballots prepared at the conclusion of the election shows that of the approximate 108 eligible voters, 37 votes were cast for and 60 votes were cast against the Union, with 3 non-determinative challenged ballots and 1 void ballot.

EXHIBIT A

On September 2, 2022, the Union filed timely objections to conduct affecting the results of the election, and timely filed amended objections on September 7, 2022. A copy of the amended objections is attached to this Report.

On October 19, 2022, the Union requested to withdraw objection 5 in its entirety. I hereby approve that withdrawal request. The remaining objections, 1, 2, 3, and 4, are the subject of this Report.

CONCLUSION AND ORDER

I have concluded that the evidence described in the offer of proof submitted by the Union in support of its amended objections could be grounds for overturning the election if introduced at a hearing. Accordingly, as per § 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED that a hearing shall be held for the purpose of receiving evidence to resolve the issues raised with respect to the objections. That hearing shall be coextensive with the Administrative Law Judge hearing in Cases 19-CA-296393, 19-CA-297405, 19-CA-300030 currently set for **April 18, 2023**, where the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the consolidated hearing, the Administrative Law Judge will issue and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the objections.

DATED at Seattle, Washington, this 5th day of January, 2023.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 Second Ave., Ste. 2948
Seattle, WA 98174-1006

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

NEW SEASONS MARKET LLC

and

**UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 555**

**Cases 19-CA-296393
 19-CA-297405
 19-CA-300030**

ORDER CONSOLIDATING CASES AND CONSOLIDATED COMPLAINT

Pursuant to § 102.33 of the Rules and Regulations of the National Labor Relations Board (“Board”) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 19-CA-296393, 19-CA-297405, and 19-CA-300030, which are based on charges filed by United Food and Commercial Workers Local 555 (“Union”) against New Seasons Market LLC (“Respondent”) are consolidated.

This Order Consolidating Cases and Consolidated Complaint, which is based on these charges, is issued pursuant to § 10(b) of the National Labor Relations Act (the “Act”), 29 U.S.C. § 151 *et seq.*, and § 102.15 of the Rules and Regulations of the Board, and alleges that Respondent has violated the Act as described below.

1.

(a) The charge in Case 19-CA-296393 was filed by the Union on May 24, 2022, and a copy was served on Respondent by U.S. mail on May 25, 2022.

(b) The first amended charge in Case 19-CA-296393 was filed by the Union on October 20, 2022, and a copy was served on Respondent by U.S. mail on that same day.

EXHIBIT B

(c) The second amended charge in Case 19-CA-296393 was filed by the Union on November 21, 2022, and a copy was served on Respondent by U.S. mail on November 22, 2022.

(d) The charge in Case 19-CA-297405 was filed by the Union on June 10, 2022, and a copy was served on Respondent by U.S. mail on that same day.

(e) The first amended charge in Case 19-CA-297405 was filed by the Union on October 20, 2022, and a copy was served on Respondent by U.S. mail on that same day.

(f) The charge in Case 19-CA-300030 was filed by the Union on July 25, 2022, and a copy was served on Respondent by U.S. mail on that same day.

2.

(a) At all material times, Respondent has been a State of Oregon limited liability company with facilities located in Oregon and Washington, where it is engaged in the business of operating retail grocery stores, including the Orenco Station store located at 1453 NE 61st Avenue, Hillsboro, Oregon (the “facility”).

(b) In operating its business described above in paragraph 2(a) during the past calendar year, a representative period, Respondent derived gross revenues in excess of \$500,000.

(c) In operating its business described above in paragraph 2(a) during the past calendar year, a representative period, Respondent purchased and received at the facility goods valued in excess of \$50,000 directly from points located outside the State of Oregon.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors within the meaning of § 2(11) of the Act, and/or agents within the meaning of § 2(13) of the Act, acting on behalf of Respondent:

(b) (6), (b) (7)(C)

5.

(a) On or about (b) (6), (b) (7)(C) 2022, Respondent, by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in the facility's parking lot area, denied its off-duty employees access to the parking lot area.

(b) On or about (b) (6), (b) (7)(C) 2022, Respondent, by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in the facility's parking lot area, prohibited its employees from distributing Union literature in the parking lot area during the employees' non-work time.

(c) On or about (b) (6), (b) (7)(C) 2022, Respondent, by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) _____ (last name unknown) in the facility's parking lot area, told its employees to respect private property while employees were distributing Union literature in the parking lot area, during employees' non-work time.

(d) On or about (b) (6), (b) (7)(C) 2022, Respondent, by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) in a meeting at the Orenco Station store, threatened its employees with loss of benefits, including Respondent's "Heartbeet Incentive" program, the \$5 coupon program, and the "blue slip" program, if the employees chose to be represented by the Union.

(e) On or about (b) (6), (b) (7)(C) 2022, Respondent, by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) at the facility, threatened its employees with the loss of benefits, including the Heartbeets Incentive program, the blue slip program, the \$5 coupon program, and other unspecified benefits, if its employees chose to be represented by the Union.

(f) On or about (b) (6), (b) (7)(C) 2022, Respondent, by (b) (6), (b) (7)(C) at the facility, threatened its employees that, if its employees chose to be represented by the Union, they would no longer be able to address workplace concerns directly with managers and supervisors and there would no longer be Coffee Talk meetings between management and employees.

(g) On or about July 6, 2022, Respondent posted a document at the facility in which Respondent threatened that, if its employees chose to be represented by the Union, they would no longer be able to address workplace concerns directly with managers and supervisors.

6.

By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

7.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring Respondent to:

(a) post for 60 days any Notice to Employees that may issue in this proceeding, in English and Spanish, in prominent places at the facility;

(b) post for 60 days any Notice to Employees that may issue in this proceeding, in English, Spanish, on its public internet website;

(c) post for 60 days the Notice of Employee Rights Under the NLRA, in English and Spanish, in prominent places at the facility;

(d) copy and mail, at its own expense, any Notice to Employees and the Notice of Employee Rights Under the NLRA, in English and Spanish, to all current and former employees employed since May 23, 2022;

(e) electronically distribute any Notice to Employees and the Notice of Employee Rights Under the NLRA, in English and Spanish, to all employees who are or have been employed by Respondent since May 23, 2022, by text messaging, e-mail, posting on social media websites, and posting on internal applications, if Respondent communicates with its employees by such means;

(f) schedule a meeting or meetings to ensure the widest possible attendance on each shift during worktime, at which (b) (6), (b) (7)(C) will read the Notice to Employees in English in the presence of a Board Agent and an agent of the Union; and

(g) schedule training for its managers and supervisors during the workday at the facility, to be conducted by a Board agent via Zoom or similar platform. The training, which will last about 45 minutes, will cover employee rights protected under the National Labor Relations Act and will include additional time for questions and answers. Respondent will instruct managers, including those set forth in paragraph 4 above, the Chief Executive Officer, Director of Operations, and store managers, that the training is mandatory, and will certify that these managers attended the training session.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before January 19, 2023.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined

to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the answer to a Consolidated Complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

Dated at Seattle, Washington, this 5th day of January, 2023.

A handwritten signature in black ink, reading "Ronald K. Hooks", is written over a horizontal line.

Ronald K. Hooks, Regional Director
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